

AMENDED IN ASSEMBLY JANUARY 28, 1998

AMENDED IN ASSEMBLY JANUARY 21, 1998

AMENDED IN ASSEMBLY JANUARY 5, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 105

Introduced by Assembly Member Wayne

January 9, 1997

An act to amend Sections 212.5, 213, 667.5, and 1170.95 of the Penal Code, relating to punishment.

LEGISLATIVE COUNSEL'S DIGEST

AB 105, as amended, Wayne. Sentencing: enhancements.

(1) Existing law provides for the classification of robbery as first and second degree, and provides for an enhanced punishment scheme where a first degree robbery, as defined, is carried out by 3 or more persons acting in concert within an inhabited house, vessel, trailer, or any other building.

This bill would apply this enhanced punishment where a first degree robbery is carried out by 2 or more persons acting in concert within an inhabited house, vessel, trailer, or any other building. The bill would also would define as first degree robbery, without regard to the above enhancement, any robbery where 2 or more persons act in concert.

(2) Existing law requires the court to impose a 3-year sentence enhancement for each prior separate prison term served by the defendant if the prior term was for a “violent

felony,” which is defined to include a number of felony offenses.

This bill would revise and recast certain of these felonies and, for purposes of this provision, expand the definition of “violent felony” to add all of the following:

(a) Any robbery wherein it is charged and proved that the defendant was either armed with a firearm or used a deadly or dangerous weapon in the commission of the robbery, instead of any robbery perpetrated in an inhabited structure, as specified, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon.

~~(b) Burglary of the first degree, wherein it is charged and proved that another person, other than an accomplice, is actually present in the specified inhabited structure during the commission of the burglary and any burglary of the first degree wherein it is charged and proved that the defendant was either armed with a firearm or personally used a deadly or dangerous weapon during the commission of the burglary.~~

~~(c)~~ Any carjacking, wherein it is charged and proved that the defendant was armed with a firearm.

~~(d)~~

~~(c)~~ Any arson where it is charged and proved that the defendant ~~with the intent to set fire to or burned or caused to be burned an inhabited structure or inhabited property by either committing the act himself or herself or in conjunction with, as specified, any other person and any arson where it is charged and proved that the defendant was armed with a firearm in the commission of the arson~~ *intentionally set fire to, or burned or caused the burning of, a distinct inhabited structure or a distinct inhabited property in the commission of that offense.*

~~(e)~~

~~(d)~~ Assault with intent to commit mayhem, rape, sodomy, oral copulation, or any of other specified sexual offenses.

~~(f)~~

~~(e)~~ Assault with caustic chemicals or flammable substances with intent to injure the flesh or disfigure the body.

By expanding the scope of an existing sentence enhancement, the bill would impose a state-mandated local program.



(3) Under existing law, the aggregate number of years of imprisonment for a person convicted of multiple residential burglaries, robberies, or arsons that are not “violent felonies,” or robbery where it is charged and found that the defendant personally used a deadly or dangerous weapon, and the robbery is not a violent felony, may exceed 5 years.

This bill would delete the provisions that apply to arson and robbery convictions involving the use of a deadly or dangerous weapon.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 212.5 of the Penal Code is
2 amended to read:
3 212.5. (a) Every robbery of any person who is
4 performing his or her duties as an operator of any bus,
5 taxicab, cable car, streetcar, trackless trolley, or other
6 vehicle, including a vehicle operated on stationary rails or
7 on a track or rail suspended in the air, and used for the
8 transportation of persons for hire, every robbery of any
9 passenger which is perpetrated on any of these vehicles,
10 and every robbery which is perpetrated in an inhabited
11 dwelling house, a vessel as defined in Section 21 of the
12 Harbors and Navigation Code which is inhabited and
13 designed for habitation, an inhabited floating home as
14 defined in subdivision (d) of Section 18075.55 of the
15 Health and Safety Code, a trailer coach as defined in the
16 Vehicle Code which is inhabited, or the inhabited portion
17 of any other building is robbery of the first degree.
18 (b) Every robbery of any person while using an
19 automated teller machine or immediately after the
20 person has used an automated teller machine and is in the

1 vicinity of the automated teller machine is robbery of the
2 first degree.

3 (c) Every robbery where the defendant, voluntarily
4 acting in concert with one or more other persons,
5 personally, or by aiding or abetting another person or
6 persons, commits the robbery, is robbery of the first
7 degree.

8 (d) All kinds of robbery other than those listed in
9 subdivisions (a), (b), and (c) are of the second degree.

10 SEC. 2. Section 213 of the Penal Code is amended to
11 read:

12 213. (a) Robbery is punishable as follows:

13 (1) Robbery of the first degree is punishable as follows:

14 (A) If the defendant, voluntarily acting in concert
15 with one or more other persons, commits the robbery
16 within an inhabited dwelling house, a vessel as defined in
17 Section 21 of the Harbors and Navigation Code, which is
18 inhabited and designed for habitation, an inhabited
19 floating home as defined in subdivision (d) of Section
20 18075.55 of the Health and Safety Code, a trailer coach as
21 defined in the Vehicle Code, which is inhabited, or the
22 inhabited portion of any other building, by imprisonment
23 in the state prison for three, six, or nine years.

24 (B) In all cases other than that specified in
25 subparagraph (A), by imprisonment in the state prison
26 for three, four, or six years.

27 (2) Robbery of the second degree is punishable by
28 imprisonment in the state prison for two, three, or five
29 years.

30 (b) Notwithstanding Section 664, attempted robbery
31 in violation of paragraph (2) of subdivision (a) is
32 punishable by imprisonment in the state prison.

33 SEC. 3. Section 667.5 of the Penal Code is amended to
34 read:

35 667.5. Enhancement of prison terms for new offenses
36 because of prior prison terms shall be imposed as follows:

37 (a) Where one of the new offenses is one of the violent
38 felonies specified in subdivision (c), in addition and
39 consecutive to any other prison terms therefor, the court
40 shall impose a three-year term for each prior separate

1 prison term served by the defendant where the prior
2 offense was one of the violent felonies specified in
3 subdivision (c). However, no additional term shall be
4 imposed under this subdivision for any prison term
5 served prior to a period of 10 years in which the defendant
6 remained free of both prison custody and the commission
7 of an offense which results in a felony conviction.

8 (b) Except where subdivision (a) applies, where the
9 new offense is any felony for which a prison sentence is
10 imposed, in addition and consecutive to any other prison
11 terms therefor, the court shall impose a one-year term for
12 each prior separate prison term served for any felony;
13 provided that no additional term shall be imposed under
14 this subdivision for any prison term served prior to a
15 period of five years in which the defendant remained free
16 of both prison custody and the commission of an offense
17 which results in a felony conviction.

18 (c) For the purpose of this section, “violent felony”
19 means any of the following:

20 (1) Murder or voluntary manslaughter.

21 (2) Mayhem.

22 (3) Rape as defined in paragraph (2) or (6) of
23 subdivision (a) of Section 261 or paragraph (1) or (4) of
24 subdivision (a) of Section 262.

25 (4) Sodomy by force, violence, duress, menace, or fear
26 of immediate and unlawful bodily injury on the victim or
27 another person.

28 (5) Oral copulation by force, violence, duress, menace,
29 or fear of immediate and unlawful bodily injury on the
30 victim or another person.

31 (6) Lewd acts on a child under the age of 14 years as
32 defined in Section 288.

33 (7) Any felony punishable by death.

34 (8) Any felony in which the defendant inflicts great
35 bodily injury on any person other than an accomplice
36 which has been charged and proved as provided for in
37 Section 12022.7 or 12022.9 on or after July 1, 1977, or as
38 specified prior to July 1, 1977, in Sections 213, 264, and 461,
39 or any felony in which the defendant uses a firearm which

1 use has been charged and proved as provided in Section
2 12022.5, 12022.53, or 12022.55.

3 (9) Any robbery wherein it is charged and proved that
4 the defendant was either armed with a firearm, as
5 provided in Section 12022, or that the defendant
6 personally used a deadly or dangerous weapon, as
7 provided in subdivision (b) of Section 12022, in the
8 commission of that robbery.

9 (10) Arson, in violation of subdivision (a) of Section
10 451.

11 (11) The offense defined in subdivision (a) of Section
12 289 where the act is accomplished against the victim's will
13 by force, violence, duress, menace, or fear of immediate
14 and unlawful bodily injury on the victim or another
15 person.

16 (12) Attempted murder.

17 (13) A violation of Section 12309.

18 (14) Kidnapping.

19 ~~(15) Burglary of the first degree, as defined in~~
20 ~~subdivision (a) of Section 460, wherein it is charged and~~
21 ~~proved that another person, other than an accomplice, is~~
22 ~~actually present in that inhabited dwelling house, that~~
23 ~~vessel, as defined in the Harbors and Navigation Code,~~
24 ~~which is inhabited and designed for habitation, that~~
25 ~~inhabited floating home as defined in subdivision (d) of~~
26 ~~Section 18075.55 of the Health and Safety Code, that~~
27 ~~inhabited trailer coach as defined in Section 635 of the~~
28 ~~Vehicle Code, or that inhabited portion of any other~~
29 ~~building during the commission of that burglary.~~

30 ~~(16)~~

31 (15) Continuous sexual abuse of a child, in violation of
32 Section 288.5.

33 ~~(17)~~

34 (16) Any carjacking wherein it is charged and proved
35 that the defendant was either armed with a firearm, as
36 provided in Section 12022, or that the defendant
37 personally used a deadly or dangerous weapon, as
38 provided in subdivision (b) of Section 12022, in the
39 commission of that carjacking.

40 ~~(18)~~

1 (17) Any robbery of the first degree punishable
2 pursuant to subparagraph (A) of paragraph (1) of
3 subdivision (a) of Section 213.

4 ~~(19)~~

5 (18) A violation of Section 264.1.

6 ~~(20)~~

7 (19) Any felony punishable by imprisonment in the
8 state prison for life, with or without the possibility of
9 parole.

10 ~~(21) Any arson committed in violation of subdivision~~
11 ~~(b) of Section 451 where it is charged and proved that the~~
12 ~~defendant with the intent to set fire to or burned or~~
13 ~~caused to be burned an inhabited structure or inhabited~~
14 ~~property by either committing the act himself or herself~~
15 ~~or aided, abetted, counseled, commanded, induced,~~
16 ~~solicited, requested, or assisted any other person to set fire~~
17 ~~to, or burn, or cause to be burned an inhabited structure~~
18 ~~or inhabited property.~~

19 *(20) Any arson committed in violation of subdivision*
20 *(b) of Section 451 where it is charged and proved that the*
21 *defendant intentionally set fire to, or burned or caused*
22 *the burning of, a distinct inhabited structure or a distinct*
23 *inhabited property in the commission of that offense.*

24 ~~(22)~~

25 (21) Any burglary of the first degree wherein it is
26 charged and proved that the defendant was either armed
27 with a firearm, as provided in Section 12022, or that the
28 defendant personally used a deadly or dangerous
29 weapon, as provided in subdivision (b) of Section 12022,
30 in the commission of that burglary.

31 ~~(23)~~

32 (22) Any arson wherein it is charged and proved that
33 the defendant was armed with a firearm, as provided in
34 Section 12022, in the commission of that arson.

35 ~~(24)~~

36 (23) A violation of Section 220.

37 ~~(25)~~

38 (24) A violation of Section 244.

39 ~~(26)~~

1 (25) Any robbery in the first degree in violation of
2 subdivision (c) of Section 212.5.

3 The Legislature finds and declares that these specified
4 crimes merit special consideration when imposing a
5 sentence to display society's condemnation for these
6 extraordinary crimes of violence against the person.

7 (d) For the purposes of this section, the defendant
8 shall be deemed to remain in prison custody for an offense
9 until the official discharge from custody or until release
10 on parole, whichever first occurs, including any time
11 during which the defendant remains subject to
12 reimprisonment for escape from custody or is
13 reimprisoned on revocation of parole. The additional
14 penalties provided for prior prison terms shall not be
15 imposed unless they are charged and admitted or found
16 true in the action for the new offense.

17 (e) The additional penalties provided for prior prison
18 terms shall not be imposed for any felony for which the
19 defendant did not serve a prior separate term in state
20 prison.

21 (f) A prior conviction of a felony shall include a
22 conviction in another jurisdiction for an offense which, if
23 committed in California, is punishable by imprisonment
24 in the state prison if the defendant served one year or
25 more in prison for the offense in the other jurisdiction. A
26 prior conviction of a particular felony shall include a
27 conviction in another jurisdiction for an offense which
28 includes all of the elements of the particular felony as
29 defined under California law if the defendant served one
30 year or more in prison for the offense in the other
31 jurisdiction.

32 (g) A prior separate prison term for the purposes of
33 this section shall mean a continuous completed period of
34 prison incarceration imposed for the particular offense
35 alone or in combination with concurrent or consecutive
36 sentences for other crimes, including any
37 reimprisonment on revocation of parole which is not
38 accompanied by a new commitment to prison, and
39 including any reimprisonment after an escape from
40 incarceration.



1 (h) Serving a prison term includes any confinement
2 time in any state prison or federal penal institution as
3 punishment for commission of an offense, including
4 confinement in a hospital or other institution or facility
5 credited as service of prison time in the jurisdiction of the
6 confinement.

7 (i) For the purposes of this section, a commitment to
8 the State Department of Mental Health as a mentally
9 disordered sex offender following a conviction of a felony,
10 which commitment exceeds one year in duration, shall be
11 deemed a prior prison term.

12 (j) For the purposes of this section, when a person
13 subject to the custody, control, and discipline of the
14 Director of Corrections is incarcerated at a facility
15 operated by the Department of the Youth Authority, that
16 incarceration shall be deemed to be a term served in state
17 prison.

18 (k) Notwithstanding subdivisions (d) and (g) or any
19 other provision of law, where one of the new offenses is
20 committed while the defendant is temporarily removed
21 from prison pursuant to Section 2690 or while the
22 defendant is transferred to a community facility pursuant
23 to Section 3416, 6253, or 6263, or while the defendant is on
24 furlough pursuant to Section 6254, the defendant shall be
25 subject to the full enhancements provided for in this
26 section.

27 This subdivision shall not apply when a full, separate,
28 and consecutive term is imposed pursuant to any other
29 provision of law.

30 SEC. 4. Section 1170.95 of the Penal Code is amended
31 to read:

32 1170.95. (a) Notwithstanding Section 1170.1 relating
33 to the maximum total of subordinate terms for
34 consecutive offenses that are not “violent felonies,” the
35 total of the subordinate terms for consecutive offenses
36 that are all residential burglaries may exceed five years.

37 (b) Notwithstanding Section 1170.1 relating to the
38 maximum total of subordinate terms for consecutive
39 offenses that are not “violent felonies,” the total of the

1 subordinate terms for consecutive offenses that are all
2 residential robberies may exceed five years.

3 (c) As used in this section, “residential burglary”
4 means burglary of an inhabited dwelling house, a vessel,
5 as defined in the Harbors and Navigation Code, which is
6 inhabited and designed for habitation, an inhabited
7 floating home as defined in subdivision (d) of Section
8 18075.55 of the Health and Safety Code, an inhabited
9 trailer coach as defined in Section 635 of the Vehicle
10 Code, or the inhabited portion of any other building.

11 (d) As used in this section, “residential robbery”
12 means a robbery that is perpetrated in an inhabited
13 dwelling house, a vessel, as defined in the Harbors and
14 Navigation Code, which is inhabited and designed for
15 habitation, an inhabited floating home as defined in
16 subdivision (d) of Section 18075.55 of the Health and
17 Safety Code, an inhabited trailer coach as defined in
18 Section 635 of the Vehicle Code, or the inhabited portion
19 of any other building.

20 SEC. 5. No reimbursement is required by this act
21 pursuant to Section 6 of Article XIII B of the California
22 Constitution because the only costs that may be incurred
23 by a local agency or school district will be incurred
24 because this act creates a new crime or infraction,
25 eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section
27 17556 of the Government Code, or changes the definition
28 of a crime within the meaning of Section 6 of Article
29 XIII B of the California Constitution.

30 Notwithstanding Section 17580 of the Government
31 Code, unless otherwise specified, the provisions of this act
32 shall become operative on the same date that the act
33 takes effect pursuant to the California Constitution.

